IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3472 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKIBEN VASTA MODHAVDIYA WIDOWOF VASTA SAJAN MODHVADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3472 of 1993

MR AJ SHASTRI for Petitioner

MR HN SOMPURA, AGP for Respondents No. 1,2

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 16/01/2002

ORAL JUDGEMENT

1. Makiben Vasta Modhvadiya, petitioner has filed this petition for a writ of mandamus or any other appropriate writ, direction or order, directing the

respondents authorities to fix up the amount of pension for the petitioner's deceased husband and pay the same to the petitioner forthwith on regular basis according to law with all consequential benefits. This petition has been filed on April 1993 and the Court has issued notice on 17th April 1993 and the same was admitted on 12th October, 1994. Today matter reached for final hearing before this Court.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner's husband named Vasta Sajan Modhvadiya was working as Infantry Sepoy with effect from 1.3.1941 in the erstwhile State of Porbandar and was performing his duties under the kind control of Commanding Officer, State Forces, Porbandar and was getting salary at Rs.18/- per month at that time. The petitioner has annexed at Annexure `A' the copy of the statement showing his date of joining and his pay issued by the record office in this behalf. The petitioner obtained cadre promotion at that time and thus he was performing his duties to the best satisfaction to his superiors.

2.2 It has been stated by the petitioner in the petition that thereafter her husband was died on 4.11.1971. It has been alleged in the petitioner that petitioner came to know that as per the Government Resolution dated 4.9.82 there is a scheme of pension for the government employees framed by the Government and it is possible to claim as being entitled, the petitioner made an application on 6.7.91 for getting the benefit of pension. The copy of the said application is also annexed with the petition. The petitioner also requested for certificate dated 30.7.91 as record was not available the treasury officer did not issue certificate in this behalf.

2.3 It is a case of the petitioner that her husband had joined in government service on 1.3.1941 and had died on 4.11.1971 and therefore he worked with the government service for about 30 years. Thereafter petitioner has also filed affidavit dated 24.4.92 before the authority in this behalf. The same has been annexed at Annexure `E' to the petition. She has also produced certificate that she is a widow of deceased petitioner in this behalf.

2.4 As the petitioner did not grant pension the present petition was filed in April 1993. Though

respondents have served, no respondents have filed affidavit controverting the said facts.

3. When the matter was placed for hearing before this Court on 8.8.2001 my learned brother Justice Kundan Singh, J. directed the petitioner to file supplementary affidavit along with the requisite document to show that petitioner's husband was in service when he died. It was also made clear that if no such affidavit is filed within the aforesaid stipulated time, the petitioner would not be entitled to claim any family pension under the Family Pension Scheme, 1972.

4. In view of the aforesaid circumstances of the case, neither petitioner nor the respondents authorities have filed affidavit in this behalf. I have no alternative but to decide the matter in accordance with law. I have gone through the papers in this behalf. In my view, there is some substance in what petitioner says. However, petitioner is required to produce some additional evidence to satisfy the authorities about her claim of pension. The authority should also try to procure the evidence and it is the duty of the authority to obtain the said record and is available to produce to the petitioner so that her legitimate claim can be entertained by the authority in this behalf.

5. As the Hon'ble Supreme Court has already stated that pension is one kind of a part of condition of the service. It is a duty of the Government to give pension to the retired employees because of his carrying service sincerely, diligently and honestly to the government and therefore by granting pension the Government is not obliged the petitioner in this behalf.

6. In view of the same, I direct the petitioner to make a proper representation to the authority for obtaining pension and petitioner will also file necessary documents in support of the same. The authority will also try to dig out the record of the case and if the claim of the petitioner is legitimate and due and authority satisfied that the claim of the petitioner is genuine and bonafide then the authority may consider the case of the petitioner kindly and sympathetically and decide the same in accordance with law. The petitioner will make representation within one month from today i.e. on or before 18th February, 2002, and the authority will decide the same by 31st March, 2002.

7. In view of the aforesaid observations and

directions, the petition is disposed of. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

syed/